

REMARKS

Claims 1 – 7, 9 – 21, 23 – 35 and 37 – 42 (as amended) and new claims 43 – 44 are pending. Claims 8, 22 and 36 have been cancelled without prejudice. Independent claims 1, 15 and 29 have been amended to recite “a master control file controlling interoperability of a medical records system between computer platforms operating on different operating systems...” as noted in the **Listing of the Claims** section of this paper. (Emphasis added.) Support for the foregoing amendment is found in the specification originally filed, for example, as noted below:

What is needed is a master control file and an engine which enable an application program to be ported to a hand-held device or used over the Internet, without requiring change to the application program, and which enable interoperability of the application program between disparate operating systems. [(Specification originally filed at page 7, lines 3-6, *et seq.*; emphasis added.)]

Applicant notes that the definition of “disparate” in the Concise Oxford Dictionary, Clarendon Press, Oxford, England (1990) (at page 336) is as follows:

disparate /'dɪspərət/ *adj. & n. –adj.* essentially different in kind; . . .
[(Underlining emphasis added.)]

New claims 43 – 44 recite similar language. New claim 44 also recites a “network” computer platform – which is supported by original claim 1 (e.g., Internet). Accordingly, no new matter has been introduced.

Rejection of Claims 8, 22, and 36 under 35 U.S.C. § 112

Claims 8, 22, and 36 are rejected under 35 U.S.C. § 112, second paragraph, for the reasons noted at page 2 of the Office Action. To expedite prosecution, Applicant has cancelled claims 8, 22 and 36 rendering the issue of their rejection moot.

Rejection of Claims 2, and 9 – 11 under 35 U.S.C. § 102

Claims 2 and 9 – 11 are rejected under 35 U.S.C. § 102 as being anticipated by U.S. Pat. No. 5,924,074 to Evans (hereinafter “Evans”) for the reasons noted at pages 3 – 4 of the Office Action. Applicant respectfully traverses this rejection for the reasons noted below.

In particular, in order for a reference to be an anticipatory reference, a single reference must disclose each and every element of the rejected claim. Such is not the case here.

Specifically, rejected claims 2, and 9-11 ultimately depend from claim 1 and claim 1 recites a "master control file . . ." as noted in the **Listing of the Claims** section of this paper. (Emphasis added.) By virtue of their dependency, claims 2, and 9-11 also recite the same "master control file . . ." recited in independent base claim 1. (Emphasis added.)

Furthermore, the Office Action expressly states in relevant part that:

Evans does not explicitly disclose a 'master control file.' It appears, however, that ODBC model and patient locator are a form of a master control file when viewed in light of Applicant's specification. [(Office Action at page 5, lines 7-9; emphasis added.)]

While the second sentence of the above-quoted text is flawed (as explained hereinbelow; Applicant's remarks below regarding the noted flaw(s) of Evans are incorporated herein by reference without having to repeat the same), it is clear that admittedly "Evans does not . . . disclose a 'master control file'" as recognized and expressly acknowledged in the Office Action. (Emphasis added.)

In view of the admitted deficiency that Evans does not disclose a master control file (MCF) as recited in the rejected claims, Evans cannot disclose each and every element of rejected claims 2 and 9-11. Accordingly, Evans does not anticipate claims 2 and 9-11 under 35 U.S.C. § 102(b).

Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 2 and 9-11 under 35 U.S.C. § 102(b) over Evans.

Rejection of Claims 1 – 11, 15 – 25, and 29 – 39 under 35 U.S.C. § 103(a)

Claims 1 – 11, 15 – 25, and 29 – 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Evans in view of Applicant's Background of the Invention, and U.S. Pat. No. 6,988,075 to Hacker (hereinafter "Hacker") for the reasons noted at pages 4-10 of the Office Action. Applicant respectfully traverses this rejection for the reasons noted below. Also, as claims 8, 22 and 36 have been cancelled, Applicant's remarks do not apply to these cancelled claims.

In particular, the Office Action cites Fig. 3, and page 3, paragraph 3, of the Applicant's specification originally filed for the presumably (though mistakenly) asserted proposition that

Applicant allegedly admits prior use of an MCF in the manner recited in the rejected claims. However, Applicant respectfully submits that the Examiner has misunderstood the specification originally filed.

For convenience, the relevant paragraphs from pages 3-4 and Fig. 3 of Applicant's specification originally filed are reproduced below for ease of discussion. Particularly, Applicant's specification states (in relation to compatible application programs and compatible operating systems) that:

One way of providing a common set of medical information communications protocols, or common standards, is by an architecture which includes the use of a master control file. A master control file (or MCF) is middleware software storing information which, when read by a computer program referred to as an engine, provides an interface between an application program and the WINDOWS operating system. The master control file (or MCF) provides an open, interoperable, platform and language independent distributed (MCF) architecture. This approach has been enormously successful and has been adopted by numerous large firms around the world as the basic architecture for their complex Patient Record Information systems. This infrastructure provides a great deal of power, scalability, and interoperability.

The foregoing quoted text relates to interoperability (provided by a master control file (MCF)) between a compatible application program and the WINDOWS operating system. Accordingly, for example, the MCF provides an interface for the requisite interoperability between a WINDOWS application program and a WINDOWS operating system. Such interoperability provided by the MCF refers to interoperability between compatible application programs and compatible operating systems which is further illustrated by reference to Fig. 3 of Applicant's specification reproduced below:

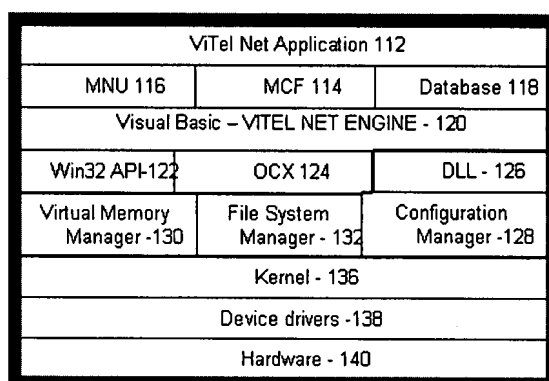


FIGURE 3 –
PRIOR ART

In relation to Fig. 3, it is noted that the MCF 114 provides interoperability between ViTel Net Application 112 and VITEL NET ENGINE – 120. There, the VITEL NET Application is to be run on a compatible VITEL NET engine. In that regard, Applicant's specification originally filed states in relevant part:

An example of an architecture 110 using a master control file is shown in Figure 3. As shown in the architecture 110 of Figure 3, an application program 112 (such as a VITEL NET Application) interfaces to a master control file (MCF) 114, as well as to an MNU 116, and a database 118. The MCF 114, the MNU 116, and the database 118 are then read by an engine 120 (such as a VITEL NET engine), which interfaces to the WINDOWS operating system 128 through the WN32 API 122, OCX files 124, and DLL files 126. The operating system 128 includes functions such as a virtual memory manager 130, a file system manager 132, and a configuration manager 134, as well as the kernel 136. The operating system 128 then interfaces to device drivers 138, which interface to hardware 140. [(Specification originally filed from page 3, line 24 to page 4, line 5; emphasis added.)]

In view of the above, the MCF 114 of Fig. 3 (of the specification originally filed) relates to interfacing/interoperability between already compatible application programs (e.g., VITEL NET Application) and already compatible operating systems (e.g., VITEL NET engine).

Thus, Applicant respectfully submits that Fig. 3 (of the specification originally filed and the quotation from page 3, paragraph 3, thereof) has been inadvertently taken out of context in

the Office Action. Fig. 3 and the text quoted in the Office Action from Applicant's specification (at page 3, paragraph 3, thereof) does not relate to interoperability "between disparate operating systems" as further noted in Applicant's specification and reiterated below:

What is [still] needed is a master control file and an engine which enable an application program to be ported to a hand-held device or used over the Internet, without requiring change to the application program, and which enable interoperability of the application program between disparate operating systems. [(Specification originally filed at page 7, lines 3-6, *et seq.*; emphasis added.)]

With that said, Applicant respectfully directs the Examiner's attention to the language of the rejected claims (as amended) reciting "a master control file controlling interoperability of a medical records system between computer platforms operating on different operating systems ..." as noted above in the **Listing of the Claims** section of this paper.

In the context of the rejected claims (as amended), because the reliance on Applicant's specification (at page 3, paragraph 3 thereof) is inaccurate and is improperly taken out of context, Applicant respectfully submits that none of the cited references disclose the requisite MCF to provide interoperability between "different" or "disparate" operating systems as recited in the claims. (Emphasis added.)

Additionally, the assertion in the Office Action that Figs. 12, 13 or 14 of Evans disclose, teach or suggest pointers (of an MCF) to various data structures for interoperability of "different" or "disparate" operating systems is faulty because (as already admitted in the Office Action) Evans does not disclose MCFs. Therefore, because Evans does not disclose MCFs, Evans cannot disclose, teach or suggest the use of MCFs or the use of MCFs that provide the pointers needed for interoperability between "different" or "disparate" operating systems. (Emphasis added.) Additionally, there is no indication that Evans ever attempted to solve the problem of interoperability between "different" or "disparate" operating systems using MCFs. Any assertion to the contrary misunderstands the disclosure of Evans, and therefore, is (respectfully) inaccurate.

Moreover, (without admitting the same) the asserted/alleged reliance on Hacker arguably for the disclosure of e-mailing data in a reply e-mail does not rectify the above-noted deficiencies of Evans. Thus, Hacker does not rectify the deficiencies of Evans.

Accordingly, due to the above-noted deficiencies of Evans in view of Hacker and the Examiner's misunderstanding of Applicant's specification, the claims (as amended) are patentably unobvious over Evans in view of Hacker.

For at least these reasons, claims **1-7, 9-11, 15-21, 23-25, 29-35, and 37-39** are patentable over Evans in view of Hacker. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims **1-7, 9-11, 15-21, 23-25, 29-35, and 37-39** under 35 U.S.C. § 103(a) as being unpatentable.

Rejection of Claims 12, 26, and 40 under 35 U.S.C. § 103(a)

Claims **12, 26, and 40** are rejected under 35 U.S.C. § 103(a) as being unpatentable over Evans in view of Applicant's Background of the Invention and Hacker and in further view of U.S. Pat. No. 6,112,183 to Swanson et al. (hereinafter "Swanson") for the reasons noted at pages 10-11 of the Office Action. Applicant respectfully traverses this rejection.

Note that claim **12** ultimately depends from claim **1** (as amended). Claim **26** depends from claim **15** (as amended). And, claim **40** depends from claim **29** (as amended). Thus, claims **12, 26 and 40** ultimately depend from base claims reciting the feature of a "master control file" to provide interoperability between "different" operating systems.

Accordingly, Applicant's prior remarks and comments regarding the deficiencies of Evans in view of Hacker are equally applicable to the instant rejection and are incorporated herein by reference without having to repeat the same here. Moreover, (without admitting the same) the asserted/alleged reliance on Swanson arguably for the disclosure of data compression, encryption and encapsulation does not rectify the above-noted deficiencies of Evans in view of Hacker.

Therefore, Applicant respectfully submits that claims **12, 26 and 40** are patentable and respectfully requests reconsideration and withdrawal of their rejection under 35 U.S.C. § 103(a) over the references of record as applied.

Rejection of Claims 13 – 14, 27 – 28, and 41 – 42 under 35 U.S.C. § 103(a)

Claims **13 – 14, 27 – 28, and 41 – 42** are rejected under 35 U.S.C. § 103(a) as being unpatentable over Evans in view of Applicant's Background of the Invention and Hacker and in

further view of Swanson (as applied to claims **12, 26** and **40**), and further in view of U.S. Pat. No. 6,665,647 to Haudenschild (hereinafter "Haudenschild") for the reasons noted at page 11 of the Office Action. Applicant respectfully traverses this rejection.

Claims **13-14** ultimately depend from claim **1** (as amended). Also, claims **27-28** ultimately depend from claim **15** (as amended). And, claims **41-42** ultimately depend from claim **29** (as amended).

Thus, claims **13 – 14, 27 – 28, and 41 – 42** ultimately depend from base claims reciting the feature of a "master control file" to provide interoperability between "different" operating systems.

Therefore, Applicant's prior remarks and comments regarding the deficiencies of Evans in view of Hacker and further in view of Swanson are equally applicable to the instant rejection and are incorporated herein by reference without having to repeat the same here.

Likewise, (without admitting the same) the asserted/alleged reliance on Haudenschild arguably for the disclosure of data encryption, transmission and de-cryption does not rectify the above-noted deficiencies of Evans in view of Hacker and/or Swanson.

Therefore, Applicant respectfully submits that claims **13 – 14, 27 – 28, and 41 – 42** are patentable and respectfully requests reconsideration and withdrawal of their rejection under 35 U.S.C. § 103(a) over the references of record as applied.

Conclusion

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

If any unresolved issues remain after full consideration of this paper, the Examiner is earnestly requested to telephone the undersigned attorney so that those issues may be promptly resolved.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935, as necessary.

Respectfully submitted,

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Enclosures:

- (1) RCE Transmittal
- (2) Check for \$3150.00 (\$790 for RCE filing fee, \$2160 for 5-month EOT and \$200 extra independent claims fee)